

From: David Brazier – Cabinet Member for Environment & Transport
Simon Jones Corporate Director Growth, Environment & Transport

To: Environment & Transport Cabinet Committee – 5 July 2023

Decision No: 23/00066

Subject: A28 Sturry Link Road – Compulsory Purchase Order

Classification: Unrestricted

Past Pathway of Paper: None

Future Pathway of Paper: None

Electoral Division: Herne Village & Sturry, Canterbury North and Canterbury City North

Summary: Approval to use of compulsory purchase to secure the land and rights required for the scheme and to give programme certainty.

Recommendation(s):

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member on, the proposed decision as follows and as indicated on the proposed decision sheet attached at Appendix D.

To give approval to:

- i) all acts required to acquire the land and rights for the carrying out and completion of the A28 Sturry Link Road scheme, including by means of a compulsory purchase order
- ii) all acts required to provide new, or improved highways including the closure of private means of access for the carrying out and completion of the A28 Sturry Link Road scheme, including by means of a side roads order; and
- iii) give delegation to the Corporate Director of Growth, Environment & Transport in consultation with the Cabinet Member for Highways and Transport to take relevant actions including but not limited to entering into contracts and other legal agreements, as necessary to implement the decision and
- iv) confirm that other decisions in Record of Decision 18/00027 remain extant.

1. Introduction

- 1.1 The proposed A28 Sturry Link Road is a key element of new highway infrastructure that will link with development roads that together will support the consented development of 1,150 new homes at Sturry/Broad Oak. It will also indirectly support other consented strategic land allocations in Canterbury City Council's Local Plan, at Sturry, at Herne, and along the Thanet Way.
- 1.2 The scheme received planning consent in September 2021. See general arrangement plan at Appendix A.
- 1.3 The main component of the scheme is a viaduct over two branches of the Great River Stour, and the Ashford to Ramsgate railway line.
- 1.4 Tenders have been invited for a two-stage design and construction process. The preferred bidder has been notified and the contract is expected to be signed in late June 2023. There will be an initial commitment to the design phase and in particular the detailed design of the viaduct, to take advantage of the contractor's experience, to achieve construction and cost efficiencies.
- 1.5 The next critical stage is for land assembly. Negotiations have commenced and it is hoped that all land can be achieved by voluntary agreement. However, a compulsory purchase order needs to be progressed in parallel to ensure all land can be secured and to give programme certainty for a target start of construction during 2025. A compulsory purchase order is also a useful mechanism to gain title to any unknown or unregistered land, and to remove any restrictive covenants affecting use of the land.
- 1.6 A new access is being provided to a residential property, and a potential development site, and a side roads order may also be required to formally close the existing accesses.
- 1.7 At the outset of the project, a report to this Committee in May 2018, led to a range of decisions, in Record of Decision 18/00027, to enable the scheme to proceed. While this contained a specific reference to compulsory purchase, the use of compulsory purchase is a strong power available to a local authority and it is appropriate to seek an updated and explicit authority to publish and implement a compulsory purchase order.

2. The Land Required

- 2.1 The proposed extent of land to be included in the compulsory purchase order is shown on the plan in Appendix B.
- 2.2 Most of the land required is held by commercial, educational, or utility organisations, but some land is required from a residential property. Discussions have commenced with all landowners to see if compensation can be agreed, and if all land can be secured by voluntary acquisitions.

3. Legal & Policy Tests for use of Compulsory Purchase

- 3.1 The use of compulsory purchase is a strong power available to a local authority and justification for its use must satisfy numerous legal and policy tests. It is considered that, in the stringent development of the scheme, these tests are met. The details will be included in the Statement of Reasons that will be published with the Order but are summarised in the paragraphs that follow.
- 3.2 The 1,150 new homes at Sturry/Broad Oak, to be served by the scheme, is a key element within Dover District Council's adopted Local Plan Strategic Policy SP3.
- 3.3 The proposed scheme seeks to remove a significant proportion of traffic from the centre of Sturry and provide an alternative route to avoid the railway level crossing. There is no other option for the route of the viaduct crossing that would not have a greater effect on property or school sports fields.
- 3.4 Early implementation of the scheme is important so that the infrastructure is in place at the earliest opportunity and available as the number of new homes being built and occupied increases. The scheme planning permission and Local Growth Fund funding are also time limited that together requires construction to start as soon as practicable.
- 3.5 The land and rights that will be included in the compulsory purchase order are the minimum that will be necessary to deliver the scheme and have been determined by design and engineering standards, environmental measures, the requirements of statutory bodies, and for sustainable surface water drainage measures. Compulsory purchase is essential to the successful implementation of the scheme. Simply put, the scheme could not be delivered by any means which do not involve the compulsory purchase of the land and rights proposed to be acquired.
- 3.6 All necessary management, consultancy, contractor, and funding resources will be available to deliver the scheme within a reasonable timescale.
- 3.7 Apart from a small area of residential land, the scheme only requires commercial, utility, or development land. Other land is being made available through the Land at Sturry s106 agreement. Taken together, the use of compulsory purchase is fair and justified and the benefits of the scheme outweigh any interference with human rights, which would be limited. The substantial public benefits of the scheme would clearly outweigh the limited private loss involved, especially when the availability of compensation is considered.
- 3.8 The development of the scheme, including the proposals for compulsory purchase, has correctly followed all statutory procedures to date and in particular with the development of the scheme concept and route within the Local Plan, and with the grant of planning permission.

- 3.9 There are no foreseeable physical or legal impediments to implementation of the scheme and more than a reasonable prospect of the scheme going ahead.
- 3.10 While steps are being taken to acquire all the land by voluntary agreement, the formal completion of the legal aspects are often lengthy, and the County Council has no control over this timetable or certainty of completion and therefore why compulsory purchase also needs to be progressed at the same time.

4. Financial Implications

- 4.1 The most recent cost estimate based on the tender prices (January 2023) for the design and build contract is £41.6m. This has increased from the cost estimate included in the original business case (£29.6m) due to exceptional inflationary pressure.
- 4.2 The increased cost estimate is offset by the indexation on the developer contributions that will mirror any further inflationary pressures. Current funding from the Local Growth Fund and developer contributions secured by s106 agreement including indexation is £40.2m
- 4.3 There is a contingency of £3.7m within the revised budget to cover increased costs and value engineering will continue to be considered through the detailed design to take advantage of the £1.3m proposed by the successful tenderer to reduce the project costs.
- 4.4 This cost estimate includes the CPO costs, and therefore if the land is acquired through voluntary contributions; there will be further contingency within the budget.
- 4.5 Sufficient developer contributions and the Local Growth Funding are banked to enable the design phase of the design and build contract to proceed.
- 4.6 There is a break clause in the design and build contract to protect Kent should any of the developer contributions not materialise and an alternative funding source not be identified.

Funding Source	Amount	Status
LGF	£5.9m	Banked
S106 – Herne Bay GC	£0.25m	Banked
S106 - Hoplands	£1.2m	Banked, for forward funding for Highway Works– potential to include in scheme budget by deed of variation
S106 – Broad Oak	£8.8m	Development commenced - £165k banked, further £962.5k + indexation due to be invoiced
S106 - Sturry	£8.8m	Secured; not yet banked
S106 - North	£5.825m	Agreed through Heads of Terms, s106

Hersden		agreement to be signed as part of planning consent under consideration by Canterbury City Council decision anticipated Autumn 2023
S106 – Colliery Site Hersden	£2.4m	Site with planning consent and S106 signed for forward funding for £3.6m Highway Works– (£1.2m retained for other potential Highway improvements)
Indexation on s106 contributions	£7.025m	Based on forecast of the s106 developer contributions from the Broadoak, Sturry and North Hersden sites
Total	£40.2m	

4.7 As with any new highway, the costs of ongoing inspection and maintenance will be part of the ongoing management of the County wide highway asset.

4.8 Once the design phase is completed, a further report will be brought to this Committee to provide further details on the updated costs and funding arrangements, prior to seeking a new Key Decision by the Cabinet Member.

5. Policy Framework

5.1 The scheme supports the Strategic Statement Outcome 2 by reducing congestion, improving the highway infrastructure to provide more reliable journey times, and improved public transport links and accessibility, to support Kent business and housing growth and encourage economic activity to benefit the local and wider communities.

6. Equalities Implications

6.1 An updated Equalities Impact Assessment has been prepared and is included in Appendix C.

7. Local Member Consultation

7.1 Local Members have been consulted and they understand the situation and need for the use of compulsory purchase.

8. Conclusions

8.1 Good progress has been made with the scheme securing planning consent and with the two-stage design and construction contract awarded. The next step is to secure all the land required to allow the scheme to be implemented.

8.2 It is hoped that land can be secured by voluntary agreement, but this can take time and then further time to make contractually binding, and hence a compulsory purchase order is required to ensure land availability and programme certainty. The proposed compulsory purchase under the Highways Act 1980 is necessary in the public interest and there is a

compelling public interest case for making and implementing a compulsory purchase order now.

9. Recommendation(s)

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9.1 The Cabinet Committee is asked to consider and endorse, or make recommendations to the Cabinet Member on, the proposed decision as follows and as indicated on the proposed decision sheet attached at Appendix D.

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9. Background Documents

Appendix A – Scheme Plan.

Appendix B – Draft Compulsory Purchase Order plan.

Appendix C – Equalities Impact Assessment.

Appendix D – Proposed Record of Decision.

Key Decision [18/00027](#)

10. Contact details

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